

**DISTRICT OF COLUMBIA
DEPARTMENT OF INSURANCE, SECURITIES, AND BANKING**

NOTICE OF FINAL RULEMAKING

The Commissioner of the Department of Insurance, Securities, and Banking ("Commissioner"), pursuant to the authority set forth in sections 12 and 23 of the Health Maintenance Organization Act of 1996 ("Act"), effective April 9, 1997 (D.C. Law 11-235, D.C. Official Code §§ 31-3411 and 31-3422 (2001)), hereby gives notice of adoption of the following amendments to Chapter 31 (Investment Guidelines for Health Maintenance Organizations) of Title 26 (Insurance) of the District of Columbia Municipal Regulations. The purpose of the amendments is to authorize health maintenance organizations to deposit invested securities in clearing corporations. The Notice of Proposed Rulemaking was published in the D.C. Register at 53 DCR 10105 (December 22, 2006). No comments were received.

Chapter 31 (Investment Guidelines for Health Maintenance Organizations) of Title 26 (Insurance) of the District of Columbia Municipal Regulations is amended as follows:

A new section 3104 is added to read as follows:

3104 DEPOSIT OF SECURITIES IN CLEARING CORPORATIONS

- 3104.1 An HMO may deposit or arrange for the deposit of securities held in or purchased for its general account in a clearing corporation.
- 3104.2 When securities are deposited with a clearing corporation, certificates representing securities of the same class of the same issuer may be merged and held in bulk in the name of the nominee of the clearing corporation with any other securities deposited with the clearing corporation by any person, regardless of the ownership of the securities, and certificates representing securities of small denominations may be merged into one or more certificates of larger denominations.
- 3104.3 The records of a custodian through which an HMO holds securities in a clearing corporation shall at all times show that the securities are held for the HMO and shall show the accounts for or in which the securities are held.
- 3104.4 Ownership of, and other interests in, the securities in a clearing corporation may be transferred by bookkeeping entry on the books of the clearing corporation without physical delivery of certificates representing the securities.

Section 3199 is amended to read as follows:

3199 DEFINITIONS

3199.1 "Admitted asset" means the investments authorized or permitted under this chapter, and in addition, includes only the following:

- (a) Petty cash and other cash funds in the HMO's principal or official branch office(s) and under the control of the HMO;
- (b) Immediately withdrawable funds on deposit in demand accounts, in a bank, savings bank, or trust company as defined in subsection 3199.4, or like funds actually in the principal or any official branch office at statement date, and in transit to such bank, savings bank or trust company with authentic deposit credit given prior to the close of business on the fifth (5th) bank working day following the statement date;
- (c) The amount fairly estimated as recoverable on cash deposited in a closed bank, savings bank, or trust company, if qualifying under subsection 3199.4 prior to the suspension of such bank, savings bank or trust company;
- (d) Bills and accounts receivable collateralized by securities of the kind in which the HMO is authorized to invest;
- (e) Premiums receivable from: (1) groups or individuals which are not more than sixty (60) days past due; and (2) the District, the United States, any state of the United States or any political subdivision thereof which is not more than ninety (90) days past due;
- (f) Amounts due under insurance policies or reinsurance arrangements from insurance companies authorized to do business in the District;
- (g) Tax refunds due from the District, the United States, any state of the United States or any political subdivision thereof;
- (h) The interest accrued on mortgage loans conforming to the requirements of this chapter, not exceeding in aggregate amount on an individual loan of one year's total due and accrued interest;
- (i) The rents accrued and owing to the HMO on real and personal property, directly or beneficially owned, not exceeding on each individual property the amount of one year's total due and accrued rent;
- (j) Interest or rents accrued on conditional sales agreements, security interests, chattel mortgages, and real or personal property under lease to other

corporations, all conforming to the provisions of this chapter, and not exceeding on any individual investment, the amount of one year's total due and accrued rent;

- (k) The fixed and required interest due and accrued on bonds and other like evidences of indebtedness, conforming to the provisions of this chapter, and not in default;
- (l) Dividends receivable on shares of stock conforming to the provisions of this chapter, provided that the market price taken for valuation purposes does not include the value of the dividend;
- (m) The interest or dividends due and payable, but not credited, on deposits in banks, savings banks and trust companies, or on accounts with savings and loan associations;
- (n) Interest accrued on secured loans conforming to the provisions of this chapter, not exceeding the amount of one year's interest on any loan;
- (o) Interest accrued on tax anticipation warrants;
- (p) The amortized value of electronic computer or data processing machines or systems purchased for use in connection with the business of the HMO, including software purchased and developed specifically for the HMO's use and purposes;
- (q) Amounts due from affiliates pursuant to management contracts or service agreements which meet the requirements of D.C. Code § 35-3003 to the extent that the affiliate has liquid assets with which to pay the balance and maintain its accounts on a current basis; provided that the aggregate amount due from affiliates may not exceed the lesser of ten percent (10%) of the organization's admitted assets or twenty-five percent (25%) of the HMO's net worth as defined in this chapter. Any amount outstanding more than three (3) months shall be deemed not current. For purpose of this paragraph "affiliates" shall have the same meaning as that term is defined in D.C. Code § 35-3701;
- (r) Intangible assets, including, but not limited to, organization good will and purchased good will, to the extent reported in the most recent annual or quarterly financial statement filed with the Commissioner after April 9, 1997. However, such assets shall be amortized, by the straight-line method, to a value of zero no later than December 31, 1999; provided, however, that no HMO shall be required pursuant to the foregoing provision to amortize such assets in an amount greater than \$ 300,000 in any one year, and in cases where

amortization of such assets by December 31, 1999 would otherwise require amortization of an annual amount in excess of \$ 300,000, the HMO shall be required only to amortize such assets at a rate of \$ 300,000 per year until all such assets have been amortized to a value of zero, unless the continuation of the current amortization schedule would result in an earlier zero value, in which case the current amortization schedule shall be applied;

- (s) Amounts due from patients or enrollees for health care services rendered which are not more than sixty (60) days past due;
- (t) Amounts advanced to providers under contract to the organization for services to be rendered to enrollees pursuant to the contract. Amounts advanced must be for a period of not more than three (3) months and must be based on historical or estimated utilization patterns with the provider and must be reconciled against actual incurred claims at least semi-annually. Amounts due in the aggregate may not exceed fifty percent (50%) of the organization's net worth as defined in subsection 3199.13. Amounts due from a single provider may not exceed the lesser of five percent (5%) of the HMO's admitted assets or ten percent (10%) of the HMO's net worth;
- (u) Cost reimbursement due from the Health Care Financing Administration of the U.S. Department of Health and Human Services, for furnishing covered medicare services to medicare enrollees which are not more than twelve (12) months past due; and
- (v) Prepaid rent or lease payments no greater than three (3) months in advance, on real property used for the administration of the HMO's business or for the delivery of medical care.

3199.2 "Bank, savings bank or trust company" means any bank, savings bank or trust company organized and supervised under the laws of the District, the United States or any state thereof, if the bank, savings bank or trust company has the insurance protection afforded by an agency of the United States.

3199.3 "Business corporation" means a corporation organized for other than not-for-profit purposes.

3199.4 "Business entity" means a sole proprietorship, a corporation, an association, a partnership, a limited partnership, a business trust, or a limited liability company.

3199.5 "Capital" means capital stock paid up, if any, and its use in a provision does not imply that a not for profit HMO without stated capital stock is excluded from the provision. The capital of such an HMO will be zero.

3199.6 "Clearing corporation" means:

- (a) A clearing corporation as defined in section 28:8-102(a)(5) of the District of Columbia Official Code;
- (b) With respect to securities issued by institutions organized or existing under the laws of a foreign country or securities used to meet the deposit requirements pursuant to the laws of a foreign country as a condition of doing business in the foreign country, a corporation that is organized or existing under the laws of a foreign country and that is legally qualified under those laws to effect transactions in securities by computerized book-entry; and
- (c) The Treasury/Reserve Automated Debt Entry System and the Treasury Direct book-entry securities system described in part 357 of title 31 of the U.S. Code of Federal Regulations.

3199.7 "Custodian" means a national bank, state bank, trust company, or broker/dealer that participates in a clearing corporation."

3199.8 "Direct" when used in connection with "obligation" means that the designated obligor shall be primarily liable on the instrument representing the obligation.

3199.9 "District" means the District of Columbia.

3199.10 "Facility" means and includes real estate and any and all forms of tangible personal property and services used constituting an operating unit.

3199.11 "Guaranteed or insured" means that the guarantor or insurer will perform or insure the obligation of the obligator or will purchase the obligation to the extent of the guaranty or insurance.

3199.12 "Mortgage" shall include a trust deed or other lien on real property securing an obligation for the payment of money.

3199.13 "Security" has the same meaning as in section 28:8-102(a)(15) of the District of Columbia Official Code.

3199.14 "Servicer" means a business entity that has a contractual obligation to service a pool of mortgage loans. The service provided shall include, but is not limited to, collection of principal and interest, keeping the accounts current, maintaining or confirming in force hazard insurance and tax status and providing supportive accounting services.

- 3199.15 "Single credit risk" means the direct, guaranteed or insured obligations of any one business entity including affiliates thereof.
- 3199.16 "Surplus" means the amount properly shown as total net worth on a company's balance sheet, plus all voluntary reserves, but not including capital paid-up.
- 3199.17 "Tangible net worth" means the par value of all issued and outstanding capital stock of a corporation (or in the case of shares having no par value, the stated value) and the amounts of all surplus accounts less the sum of:
- (a) Such intangible assets as deferred charges, organization and development expense, discount and expense incurred in securing capital, good will, trademarks, trade names and patents;
 - (b) Leasehold improvements; and
 - (c) Any reserves carried by the corporation and not otherwise deducted from assets.
- 3199.18 "Unconditional" when used in connection with the term "obligation" means that nothing remains to be done or to occur to make the designated obligor liable on the instrument, and that the legal holder shall have the status at least equal to that of general creditor of the obligor."